

HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

M.A.C.M.A.No.1853 of 2005

JUDGMENT:

The 2nd respondent-insurer among two respondents of the claim, maintained by the injured in O.P.No.75 of 2003 under Section 166 of the Motor Vehicles Act for Rs.1,00,000/-, for the injuries sustained in the motor accident dated 07.10.2002 while travelling in the lorry bearing No.AP 04 U 1275 of the 1st respondent insured with 2nd respondent, maintained the appeal impugning the award of the tribunal dated 29.04.2005 in fixing joint liability, by awarding compensation of Rs.30,000/- with interest @ 9% p.a.

Before the tribunal, the 1st respondent-owner of the vehicle remained exparte and 2nd respondent-insurer alone contested by saying that the injured was an unauthorized passenger of goods carriage and not entitled to compensation as there is no risk covered by the policy to indemnify the unauthorized passenger. But tribunal fixed joint liability with the observations that the injured was travelling with the load of ground nut seeds as owner of the goods, from Naidupet to Srikalahasti and not a gratuitous passenger.

The appeal against claimant shown as the 1st respondent to the appeal dismissed for default.

The contention of the insurer as referred supra, is that he is mid way unauthorized passenger and the ground nut seeds load is not that of him to claim as owner of goods.

It is the contention of the learned counsel for the insured-1st respondent to the appeal that the tribunal awarded the compensation, by arriving a right conclusion of the injured was owner of the goods. Hence, there is nothing to interfere with the award and prayed to dismiss the appeal.

No doubt, there is nothing to pass any order, but for, to decide the interse dispute between the insurer and the insured, within the purview of Section 168 of the Act.

In fact, the very F.I.R. issued by the injured-claimant that was placed reliance and marked as Ex.A1 and that the basis for the investigation in the police final report covered by Ex.A2 is very clear of the statement of the injured that he boarded the lorry to go to the place to see and bring back his wife. It is further stated that the driver of the lorry allotted seat to him and he was travelling in the lorry at the time of accident. It is not mentioned in the F.I.R. that he is owner or representative

of the goods but for from the very say of unauthroized passenger, though coming to the claim petition with ingenious intelligence developed as if owner of goods so also in the evidence, once the claimant relied on the very F.I.R. that can be relied on by the opposite party in proof of the fact of the injured was unauthorized passenger, same is proposition laid down by the Apex Court in **National Insurance Company Ltd. v. Rattani and others**^[1] quoted with approval in **N.I.C. v. Savitri Devi**^[2].

Having regard to the above, the tribunal is not right in ignoring F.I.R. or any sayings of injured was owner of the goods. However, the fact remains as laid down by the Apex Court in **United India Insurance Company Limited v. Laxmamma**^[3] in while saying insurance company is not liable to compensate the claimants, however, observed what the amount deposited entitled to be withdrawn by the claimant for the insurer to recover from the owner.

Having regard to the above, the appeal is partly allowed while holding insurance company is not liable. However, since the amount deposited by the insurance company, the claimant is entitled to withdraw and the insurer is entitled to recover from the owner by following the guidelines of the Apex Court in **Oriental Insurance Company Limited Vs. Nanjappan**^[4] that too appeal

against claimant since dismissed.

The appeal is partly allowed while directing the insurance company to pay to the claimant and recover from the owner of the vehicle, as laid down in **Laxmamma** (supra) and by following the pay and recovery guidelines of the Apex Court in **Nanjappan** (supra). There is no order as to costs.

8. Miscellaneous petitions, pending if any, shall stand closed.

Dr. B. SIVA SANKARA RAO, J

Date:23-03-2016

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[\[1\]](#) (2009) 2 SCC 75

[\[2\]](#) 2013(11) SCC 554

[\[3\]](#) 2012(5) SCC 234

[\[4\]](#) (2004) 13 SCC 224=2004-SAR(civil)-290